TABLE OF CONTENTS

	Page
QUESTION PRESENTED	1
STATUTES INVOLVED	2
STATEMENT	2
ARGUMENT	4
I. THE DECISIONS BELOW ARE CLEARLY CORRECT	4
(a) The School Land Grants to the Western Mineral Bearing States as to Lands Unsurveyed at the Date of Statehood Take Effect Upon Final Approval of Survey. If at Such Time, Lands Within Numbered School Sections are Known to be Mineral in Character, They Do Not Pass to the State but Remain the Property of the United States for Disposition Under the Mining Laws	4
(b) Congress Has Constituted the Land Department, Under the Supervision and Control of the Secretary of the Interior, a Special Tribunal with Judicial Functions. Where, as in the Administration of the Mining Laws, the Secretary is Required, Upon Application of a Claimant, to Issue a Mineral Patent, His Determination of the Mineral Character of Land in the Absence of Fraud or Imposition is Binding upon the Courts	5
II. THERE IS NO CONFLICT OF DECISION	6
III. THERE IS NO PRESENTLY IMPORTANT QUESTION OF FEDERAL LAW	9
CONCLUSION	11

TABLE OF CONTENTS—Continued

CITATIONS

CASES:	Page
Cameron v. United States, 252 U. S. 450 (1920)	6
Heydenfeldt v. Daney Gold and Silver Mining Company, 93 U. S. 634 (1876)	4
Michigan Land and Lumber Co. v. Rust, 168 U. S. 589 (1897)	6
Mining Co. v. Consolidated Mining Co., 102 U. S. 167 (1880)	4
Mullan v. United States, 118 U. S. 271 (1886)	4, 5
Riverside Oil Co. v. Hitchcock, 190 U. S. 316 (1903)	6
Smelting Co. v. Kemp, 104 U. S. 636 (1881)	7
Standard Oil Co. of California v. United States, 107 F. 2d 402 (9th Cir. 1939)	6
State of Utah v. Work, 6 F. 2d 675, 676 (D. C. Cir. 1925, affirmed 273 U. S. 649)	5
Steel v. Smelting Company, 106 U. S. 447 (1882)	7
Sweet v. United States, 228 F. 421 (8th Cir. 1915)	8
United States v. Morrison, 240 U. S. 192 (1916)	5
United States v. Sweet, 245 U. S. 563 (1918)	5, 8, 10
United States v. Wyoming, 331 U. S. 440 (1947)	6
West v. Standard Oil Co., 278 U. S. 200, 208 (1929)	5, 6
Work v. Louisiana, 269 U. S. 250, 257-258 (1925)	5
Wright v. Roseberry, 121 U. S. 488 (1887)	7
Wyoming v. United States, 255 U. S. 489, 500-501 (1921)	5

STATUTES:

Act of May 10, 1872, 17 Stat. 91, 30 U. S. C. 22-24, 26-30, 33-35, 37 and 39-42	2, 4

TABLE OF CONTENTS—Continued

STATUTES—Continued: Page

Act of February 28, 1891, 26 Stat. 796, 43 U. S. C. 851 ..... 2, 4, 5, 8

Act of July 16, 1894, 28 Stat. 107, Sections 6, 10 ..... 2, 3, 4, 8

Act of May 3, 1902, 32 Stat. 189, 43 U. S. C. 853 ..... 2, 4, 5, 8

Act of January 25, 1927, 44 Stat. 1026, 43 U. S. C. 870 ..... 2, 9, 10

Act of April 22, 1954, 68 Stat. 57, 43 U. S. C. 870 (d) 2, 9, 10

Mineral Lands Leasing Act, February 25, 1920, Ch. 85, 41 Stat. 437 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 263

STATE OF UTAH; JOHN ARCHER; W. H. H. CRANMER; and J. R. SIMPLOT COMPANY, a corporation,

Petitioners,

vs.

BRADLEY ESTATES, INC., a corporation; and WALTER N. STILLMAN; CHARLES A. RHEALT; and ROBERT I. HUNNEMAN, Trustees under the will of ROBERT S. BRADLEY, deceased.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether four United States mineral patents, issued to the predecessors of respondents, are valid insofar as they affect portions of two sections of land designated in the grant for the support of common schools of the State of Utah.

STATUTES INVOLVED

The statutory provisions involved are Sections 6 and 10 of the Act of July 16, 1894, 28 Stat. 107; the Act of February 28, 1891, 26 Stat. 796, 43 U. S. C. 851; the Act of May 3, 1902, 32 Stat. 189, 43 U. S. C. 853; the Act of May 10, 1872, 17 Stat. 91, 30 U. S. C. 22-24, 26-30, 33-35, 37 and 39-42. Contrary to the statement of petitioners, the Act of January 25, 1927, 44 Stat. 1026, 43 U. S. C. 870, and the Act of April 22, 1954, 68 Stat. 57, 43 U. S. C. 870 (d), are not involved.

STATEMENT

No issue of fact is involved. However, amplification of the statement of petitioners is necessary to an understanding of the question presented. Survey of the school sections in question, being Section 32, Township 12 North, Range 8 East, and Section 36, Township 11 North, Range 7 East, Salt Lake Meridian, had not been made at the time of the admission into the Union of the State of Utah. After statehood, township survey covering said sections was made and finally approved. Subsequent to final approval of survey, applications for mineral patents, based upon the location of claims made under the mining laws as embodied in said Act of May 10, 1872, were filed by the predecessors of respondents in the United States Land Office in Salt Lake City. These applications were made in four proceedings. The first application covering fourteen claims was filed in 1907 and the other three applications covering nine claims were filed in 1912. Inasmuch as the applications covered in part lands within the sections designated in the grant to the State of Utah for the support of its common schools, notice in accordance with Land Department regulations and procedure was

given to the State of Utah. The State appeared in each of the four proceedings and filed written protests against the granting of the requested mineral patents, contending that the school sections affected were granted to the State of Utah under the provisions of the Utah Enabling Act; that mineral lands were in no wise excepted, reserved or withheld from the grant of said Act; that the respective school sections became vested in and passed to the State absolutely and without reserve; and that the lands were not at the time of the admission of the State into the Union and at the time of the passage of the Enabling Act, or at the time of final approval of survey, known to be mineral or valuable for minerals. The State participated throughout. The proceedings extended over a period of more than seven years. By final action taken within the Land Department, it was found and determined that at and prior to the date of the final approval of the official survey, the lands were known to be valuable for the phosphate minerals they contained, and the other contentions of the State were denied. Upon the basis of such final determinations, the mineral patents in question were issued, the first in 1908, and the last three in 1915.

Ever since patent, taxes against respondents and their predecessors, as owners of these lands, have been imposed and are now being imposed by the State of Utah. After patent, no claim of ownership was made by the State until 1952, when it issued a lease to petitioner Archer. Petitioners Cranmer and Simplot claim under him. The assertions by Archer of right to possession necessitated the action to quiet title by respondents. Decree quieting respondents' title was entered by the District Court for the District of Utah, and on appeal, affirmed by the Court of Appeals, Tenth Circuit.

ARGUMENT

I.

THE DECISIONS BELOW ARE CLEARLY CORRECT.

The validity of the patents in question is controlled by the law in force at the time of their issuance.

Two subjects of federal legislation are involved, one dealing with the mining laws as embodied in the Act of May 10, 1872, and the other dealing with the Congressional grant to the State of Utah for the support of its common schools. The Utah grant, in its initial form, is embodied in the Act of July 16, 1894, pursuant to which Utah was admitted into the Union. This Act has been modified so far as material here by the School Land Indemnity Law of February 28, 1891, which was made particularly applicable to the State of Utah by the Act of May 3, 1902.

In the construction and administration of these bodies of law, under decisions of the United States Courts, two fundamental principles have become established:

> **(a) The School Land Grants to the Western Mineral Bearing States as to Lands Unsurveyed at the Date of Statehood Take Effect Upon Final Approval of Survey. If at Such Time, Lands Within Numbered School Sections are Known to be Mineral in Character, They Do Not Pass to the State but Remain the Property of the United States for Disposition Under the Mining Laws.**

See: *Heydenfeldt* v. *Daney Gold and Silver Mining Company*, 93 U. S. 634 (1876); *Mining Co.* v. *Consolidated Mining Co.*, 102 U. S. 167 (1880); *Mullan* v. *United States*,

118 U. S. 271 (1886); *United States* v. *Morrison*, 240 U. S. 192 (1916).

For many years after the admission of Utah into the Union, the State contended that the principle stated above did not apply to the grant for the support of her common schools. This controversy was laid at rest in *United States* v. *Sweet*, 245 U. S. 563 (1918), where this Court said that the school grant to Utah must be read in the light of the mining laws, the School Land Indemnity Law (Acts of February 28, 1891 and May 3, 1902), and the settled public policy respecting mineral lands, and held that where numbered school sections are mineral—known to be so when the grant takes effect—they do not pass under the Utah grant, but remain subject to disposition under the mining laws which are not curtailed. Thus the principle stated above was made applicable to the State of Utah and she was placed upon an equal footing with the other Western mineral bearing States in the administration of the school land grants.

Such has been the uniform construction of the holding in *United States* v. *Sweet, supra.* See: *Wyoming* v. *United States*, 255 U. S. 489, 500-501 (1921); *Work* v. *Louisiana*, 269 U. S. 250, 257-258 (1925); *West* v. *Standard Oil Co.*, 278 U. S. 200, 208 (1929); *State of Utah* v. *Work*, 6 F. 2d 675, 676 (D. C. Cir. 1925, affirmed 273 U. S. 649).

(b) Congress Has Constituted the Land Department, Under the Supervision and Control of the Secretary of the Interior, a Special Tribunal with Judicial Functions. Where, as in the Administration of the Mining Laws, the Secretary is Required, Upon Application of a Claimant, to Issue a Mineral Patent, His Determination of the Mineral Character of Land in the Absence of Fraud or Imposition is Binding upon the Courts.

See: *Michigan Land and Lumber Co.* v. *Rust*, 168 U. S. 589 (1897); *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316 (1903); *Cameron* v. *United States*, 252 U. S. 450 (1920); *West* v. *Standard Oil Co., supra; Standard Oil Co. of California* v. *United States*, 107 F. 2d 402 (9th Cir. 1939).

The principles stated above have become fixed and established by a consistent course of judicial determination extending back for almost three quarters of a century. They were correctly applied by the Land Department in the long drawn out proceedings before it, which culminated in the issuance of the mineral patents in question, by the trial court in the entry of its judgment quieting the title of respondents, and by the Court of Appeals, Tenth Circuit, in affirming that judgment. They control this suit. Under the application of these principles no other result could have been reached here.

II.

THERE IS NO CONFLICT OF DECISION.

No decisions in conflict with the above-stated principles have been found and we are sure that none exists.

United States v. *Wyoming*, 331 U. S. 440 (1947), cited by petitioners, is not contra. An examination of the opinion in that case will disclose that the question presented was whether Wyoming, under its Enabling Act, was granted such an interest in unsurveyed school lands as to prevent the Federal Government, prior to survey, from placing such lands in a petroleum reserve. No question of the mineral character of the land at the date of approval of survey or of the issuance of a patent to a claimant under the mining laws

was involved. The observations which are made by the Court respecting the history of the school land grants relate to the rights which may be acquired by settlers and homesteaders of nonmineral lands under the homestead and pre-emption laws. These considerations deal with the nonmineral lands granted to the States for the support of their common schools. They have no application to mineral lands which were excluded from such grants and are controlled by the mining laws.

Wright v. *Roseberry*, 121 U. S. 488 (1887), is not in conflict with the second principle stated above. It deals with a swamp land grant. The Land Department had never taken jurisdiction to make a factual determination of the character of the land and the question was whether, in the absence of such a determination, any other method of proof was open to prevent a failure of rights. Such a situation has no application here, for the Land Department, at the very inception of the patent proceedings, took jurisdiction over the question of the character of the land.

The rule announced in *Steel* v. *Smelting Company*, 106 U. S. 447 (1882), has no application here. The factual determination made within the Land Department as to the mineral character of the lands in question excluded the same from the grant to the State of Utah. They remained the property of the United States, subject to disposition under the mining laws. The situation here is more like that found in *Smelting Co.* v. *Kemp*, 104 U. S. 636 (1881), where it is held that a patent executed in the form and by the proper officers for such a portion of the public domain as is by law subject to sale or other disposal, passes the title thereto and the findings of the facts by the Land Department, which authorize its issue are conclusive in a court of law.

The contentions made by the State here, namely, that under the provisions of Section 10 of the Utah Enabling Act, lands granted to the State for the support of the common schools, whether surveyed or unsurveyed, vested absolutely at the date of statehood, were urged by the State before the Court of Appeals, Eighth Circuit in the *Sweet* case, *supra*, and are reflected in the opinion sustaining the contentions of the State in that Court. See: *Sweet* v. *United States*, 228 F. 421 (8th Cir. 1915). They were urged upon this Court and fully considered by it in the opinion in *United States* v. *Sweet*, *supra*. Those contentions were determined adversely to the State and laid at rest in that decision.

The conclusive answer to the contentions of the State is found in the very language of said Section 10. The subject of the Section is the "lands herein granted". These, under *United States* v. *Sweet*, *supra*, are nonmineral lands. The provisions relating to surveyed and unsurveyed lands, accordingly, have to do with nonmineral lands passing under the grant. As made clear by this Court in *United States* v. *Sweet*, *supra*, the School Land Indemnity Law of February 28, 1891, made provisions for compensating the States for nonmineral school sections taken by pre-emption or homestead settlers as well as for sections mineral in character; and these provisions were made particularly applicable to the State of Utah by the Act of May 3, 1902. In order that there should be no doubt about the matter, the latter Act contains a concluding provision that the grant to Utah shall be administered in accordance with the provisions of said Act of February 28, 1891, "anything in the Act providing for the admission of said State into the Union, to the contrary notwithstanding."

III.

THERE IS NO PRESENTLY IMPORTANT QUESTION OF FEDERAL LAW.

The principles stated above control the present suit. These principles are now largely of historical interest. Since the rights involved here became vested, fundamental changes have been made in both the mining laws and the school land grants to the mineral bearing States.

Probably the most important change in the mining laws came in the Mineral Lands Leasing Act of February 25, 1920, Ch. 85, 41 Stat. 437. Under this Act, the acquisition of phosphate, oil, gas and certain other minerals was withdrawn from the general mining laws and placed on a lease basis. Mining claims such as those covered by the patents involved, being located for phosphate, can no longer be initiated. It is unlikely that rights similarly acquired will again be drawn into question.

In the school land grants, fundamental changes have been made by said Acts of January 25, 1927, and April 22, 1954. Under the former Act, subject to the exceptions and conditions therein set forth, numbered school sections, though mineral in character, are granted to the States. Under the latter Act, numbered mineral school sections then surveyed and covered with leases issued by the United States prior to survey, are granted to the several States subject to such leases, they being substituted for the United States as lessor, and as to numbered mineral school sections thereafter surveyed, they likewise pass to the States upon survey, subject to leases issued by the United States prior to survey, with like substitution as lessor.

Petitioners appear to rely upon the Acts of January 25, 1927, and April 22, 1954, in support of their contention that an important question of Federal law is presented in the case at bar. They assert that *United States* v. *Sweet, supra,* was in effect repealed by the Act of January 25, 1927, and thus seek to avoid the controlling effect of that decision. We readily concede that the Act of January 25, 1927, had a far-reaching effect in the school land grants. However, that Act clearly had no effect upon the rights involved in the present suit. The grant of mineral school sections thereunder was made expressly subject to existing rights. Obviously, the Act could not operate as a grant by the United States to the lands in question here for the United States had, long prior to the passage of the Act, parted with its title and vested the same in the predecessors of respondents. Likewise, it is clear that the Act of April 22, 1954, dealing as it does with leases on unsurveyed lands granted by the United States prior to the date of its passage and leases thereafter granted on unsurveyed lands, can have no bearing upon the case at bar.

Reference is made by petitioners to uranium claims located upon the public domain within the State of Utah. The mention of uranium in this atomic age excites the imagination. The administration and construction of the several Acts which have modified the mining laws and the school land grants, passed in the last thirty-five years, may very well present important questions of federal law. Some of these questions may involve the acquisition of rights in lands valuable for uranium. No such statute or right arising thereunder is involved here. This suit turns in a narrow compass. It is essentially a matter of private litigation involving small parcels of land covering minerals no longer subject to loca-

tion under the mining laws. The principles controlling the result here have long been fixed and determined. No occasion now exists for their reconsideration.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 12, 1955.